

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 332 OF 2016

M/s. Balmer Lawrie & Company Limited	..Petitioner
VS.	
The New India Assurance Company Ltd. & Anr.	..Respondents

Mr. Birendra Saraf with Mr. Rohan Agrawal for Petitioner.
Mr. V. Y. Sanglikar for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 20 JANUARY 2016

P.C :

1] The challenge in this petition is to the order dated 22 December 2015, to the extent, the same imposes condition of deposit of 50% of the amount of the arrears of damages and deposit of rent / compensation at the rate of Rs.1,58,500/- per month from 1 December 2015 onwards till the final decision in the appeal. The rent / compensation which is directed to be deposited, corresponds to 50% of the amount determined by the Estate Officer. In all therefore, the arrears, as a condition for continuing in possession of the suit premises, despite orders of eviction, have been directed to pay 50% of the amounts determined by the Estate Officer as due and payable in respect of the suit premises.

2] Mr. Birendra Saraf, the learned counsel for the petitioner has submitted that the petitioner is a public sector undertaking. That apart, he submitted that the case of the petitioner is completely covered by the decision of the Hon'ble Apex Court in the case of *Dr. Suhas Pophale vs. Oriental Insurance Company Ltd.*¹ He submitted that in view of this position, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1970 are not applicable and the order impugned before the Appellate Authority is *ex facie* without jurisdiction. For all these reasons, he submitted that there was no question of imposing such conditions and a blanket stay ought to have been granted in the matter.

3] Having heard the learned counsel for the parties, perused the record, it cannot be said that the impugned order is in excess of jurisdiction. The appeal Court has appreciated the contentions raised by and on behalf of the petitioner in the context of decision in the case of *Dr. Suhas Pophale* (supra), as also the contention raised by and on behalf of the respondents in the matter of a reference before the Larger Bench. Upon evaluating such circumstances, as also other relevant matters, the appeal Court, in its discretion has directed the petitioner to deposit only 50% of the amounts as aforesaid, although, the normal rule is that the party seeking stay on the execution of a decree ought to be required to

1 2014 (4) SCC 657

deposit the entire amount. There is neither any unreasonableness or perversity in the matter of exercise of such discretion. Therefore, no case is made out to entertain the present petition. This petition is dismissed. There shall be no order as to costs.

4] At the request of the learned counsel for the petitioner, the time for deposit of the amounts as directed in the impugned order is extended by a period of four weeks from today.

(M. S. SONAK, J.)

Chandka